

The Resolution Report

News on dispute resolution trends, laws and ethics

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Year in Review... and Future Plans

by Sharon Press

With the start of a new year, it seemed appropriate to recap the accomplishments of 2005 and highlight expectations for 2006.

Legislation

After the very significant revision to Chapter 44, Florida Statutes, in 2004 which included the adoption of the Florida Confidentiality and Privilege Act, the 2005 legislative session was relatively quiet in terms of ADR legislation. A couple of minor revisions were made to the funding portions of section 44.108 and a cap on compensation was adopted, in section 44.103, for court-ordered non-binding arbitrators. The provisions went into effect July 2005 with little fanfare.

In 2006, we hope to see a revision to Chapter 44 to bring court-ordered mediation in line with the Supreme Court's unified family court concept. Specifically, section 44.1011(2) currently includes the following subdivisions: (a) appellate court mediation, (b) circuit court mediation; (c) county court mediation; (d) family mediation; and (e) dependency or in need of service mediation. While those subsections worked when adopted many years ago, the Supreme Court has shifted its terminology and now uses "family" court as the umbrella term which includes domestic relations, juvenile dependency, domestic violence and other similar cases. The proposed legislative changes, while primarily "non-substantive," are substantial. Watch future issues of the newsletter for the latest details.

Rule Revisions

After holding Oral Argument in June, the Supreme Court released its opinion in SC04-2482, In Re: Report of the ADR Rules and Policy Committee on Senior Judges as Mediators on November 3. The revisions to the Florida Rules for Certified and Court-Appointed Mediators, the Florida Rules of Civil

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Mediator Ethics Advisory Opinions

Opinion 2004-009

As a Mediator, I have an ethical concern about events that have occurred during Mediation Conferences where I was the attorney representing an injured workers involving a Workers' Compensation claim. I am a mediator and am quite certain that these same events will take place while I am serving as a mediator. Therefore, I seek your guidance only with respect to what I should do under the same circumstances as a Mediator. I will explain the setting and what I think I should do, but seek the committee's opinion about the appropriate ethical course I should follow as a mediator. For some of the committee members who are familiar with the workers' compensation law, I may be more verbose than necessary, but the entire circumstances will be needed to comprehend the depth of my concern for those who are not familiar with this law.

Florida Statutes, section 440.105 defines certain criminal acts. Herein, I will call a defense that is commonly asserted by the Employer/Carrier a "section 440.105 Fraud" defense. Essentially, this section of the law obligates a party who believes that another party who has committed any of the acts prohibited by section 440.105 to report the conduct to the Bureau of Fraud for criminal disposition. In fact, the statute states that anyone who believes such conduct has occurred "shall" report the conduct. Florida's First District Court of Appeals has also determined that a Judge of Compensation Claims and Florida's criminal courts have concurrent jurisdiction to determine whether such conduct has taken place. If either of these courts should make such a determination, the injured worker is to be denied all benefits being sought or otherwise due under Chapter 440, and potentially face criminal prosecution and sanction. Notwithstanding the statute's requirement that the conduct be reported for criminal investigation and disposition, it is almost always the case that the conduct of the employee this is believed to be fraudulent has not been reported to the Bureau of Fraud. Rather, the "section 440.105 Fraud" defense is not raised in the civil proceeding under the workers' compensation law, thereby serving as defense to the provision of any and all benefits being sought by the employee.

Questions

about the standards of conduct contained in the Florida Rules for Certified and Court-Appointed Mediators should be addressed to: Mediator Ethics Advisory Committee, c/o Dispute Resolution Center, Supreme Court Building, Tallahassee, Florida 32399.

These opinions are rendered pursuant to the authority of rule 10.900, Florida Rules for Certified and Court-Appointed Mediators and are based on the specific facts outlined in the question. They are based on the Committee's interpretation of the rules in effect on the date the opinions were rendered. The summary has been prepared for quick reference. Any inconsistency between the summary and the opinion should be rendered in favor of the opinion.

This is how the dilemma develops. A statement is made by the attorney for the Employer/Carrier that the injured employee's claim is being denied based on a "section 440.105 Fraud" defense during opening statements. Frankly, as an attorney, I advise my clients that entertaining an offer to settle his or her claims for a lump sum of money under those circumstances will not dispose of the right, or obligation, of the Employer or Carrier to report the accusation to the appropriate authority for criminal prosecution and we should therefore not entertain settlement offers. For it seems to me, as the employee's attorney that were I to encourage my client to entertain such offers, my client and I would be participating in extortion, based on the implicit threat of the Employer/Carrier to prosecute my client criminally based on the express language of Florida Statutes, section 440.105. I am aware of the Florida Bar Staff opinion 25110 prohibiting the direct or indirect threat of criminal prosecution.

As a final consideration, the committee should know that the Division of Workers' Compensation requires a mediation to be conducted prior to a Judge of Compensation Claims making a determination as to the merits of the Employee's claims at a Hearing. The state of Florida employs mediators within the Division of Workers' Compensation for that purpose, at no cost to the parties. I only serve as a mediator in workers' compensation proceedings when the attorneys for the parties find it appropriate to arrange for a private mediation at a cost, as opposed to the cost free mediation process provided by the Division of Workers' Compensation.

As a mediator, I am deeply troubled that delivering offers to employees under these circumstances would be participating in extortion, in its purest of definitions. I therefore seek your guidance and opinion in this regard. I look forward to hearing from you at your first available opportunity.

*Certified Circuit Civil Mediator
Central Division*

Authority Referenced

Rules 10.200, 10.410, and 10.420(b)(4), Florida Rules for Certified and Court-Appointed Mediators

In Re: Florida Rules of Workers' Compensation Procedure, 891 So2d 474 (Fla. 2004)

Rule 4.361(d), Florida Rules of Workers' Compensation Procedure (repealed December 2, 2004)

Summary

While the Committee does not have jurisdiction to apply the Workers' Compensation statute to the specific facts in your question, the Florida Rules for Certified and Court-Appointed Mediators, to which all certified mediators must adhere, makes clear that if the mediator believes that the mediation entails fraud, duress, the absence of bargaining ability or unconscionability, the mediator is required to terminate the mediation. Rule 10.420(b)(4).

Opinion

The Committee declines to engage in statutory interpretation to determine whether extortion may possibly occur in the scenario you describe since such a determination would be beyond its jurisdiction. The Committee does, however, have jurisdiction to address your ethical question. Specifically, the Florida Rules for Certified and Court-Appointed Mediators require that mediation be conducted as a balanced process. Rule 10.410. If the mediator believes that the mediation entails fraud, duress, unconscionability, or the absence of bargaining ability, the mediator is required to terminate the mediation. Rule 10.420(b)(4).

It is worth noting that, on December 2, 2004, the Florida Supreme Court repealed the Florida Rules of Workers' Compensation Procedure, 891 So.2d 474 (Fla. 2004). One of the repealed rules [rule 4.361(d)] required that a mediator's conduct in discharging professional responsibility in mediating workers' compensation cases shall be guided by the Standards of Conduct found in the state court mediation rules. Nonetheless, certified mediators are still bound by the Standards of Professional Conduct found in the Florida Rules for Certified and Court-Appointed Mediators when they are mediating. These rules provide ethical standards of conduct for **certified** and court-appointed mediators" [emphasis added]. Rule 10.200.

Signed: Fran Tetunic, Chair
Dated: March 18, 2005

Opinion 2004-010

As a certified circuit mediator who mediates, among other things, claims against the state, its agencies, or subdivisions, I would like to elicit the opinion of the Mediator Ethics Advisory Committee concerning the following:

Florida Statute 69.081(8)(a) provides, in relevant part, that "[a]ny portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against the state, its agencies, or subdivisions or against any municipality or constitutionally created body or commission is void, contrary to public policy, and may not be enforced."

Florida Statute 44.405(1) (2004) provides, in relevant part, that "all mediation communication shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel." The statute goes on to address sanctions that may be imposed for violations of this section.

During the course of negotiations, it is not uncommon for a plaintiff to request a written apology from the public agency defendant that is the subject of the provisions of Florida Statutes 69.081 and 119.07. Suppose the public agency prepares and provides the plaintiff with a written apology during the course of mediation. Included at the bottom of the written apology is language identifying the document as a confidential mediation communication pursuant to Florida Statute 44.405(1) (2004). The parties then sign a written agreement reached during mediation containing the monetary and waiver terms, but the written agreement omits any reference to the written apology.

If a public agency provides a plaintiff with a written apology during the course of a mediation under the circumstances described above, does the written apology fall within the definition of a “mediation communication” as defined in Florida Statute 44.403(1) (2004) so that the written apology is confidential and only subject to public disclosure under the limited circumstances set forth in Florida Statutes 44.405(4)(a) (2004)?

*Certified County and Circuit Civil Mediator
Central Division*

Authority Referenced

Rule 10.360(a), Florida Rules for Certified and Court-Appointed Mediators
The “Mediation Confidentiality and Privilege Act,” sections 44.401 – 44.106,
Florida Statutes
Section 69.081(8) and Chapter 688, Florida Statutes

Summary

The written apology you reference falls within the definition of a “mediation communication” and, therefore, it is confidential, since it is not included in the written agreement, has not been waived by the parties, and does not fall within any of the enumerated exceptions under section 44.405(4)(a), Florida Statutes.

Opinion

A mediator is required to maintain confidentiality of “all information revealed during mediation except where disclosure is required by law¹.” Rule 10.360(a). The “Mediation Confidentiality and Privilege Act,” sections 44.401 – 44.406, Florida Statutes, defines a “mediation communication” as an “oral or written statement . . . by or to a mediation participant made during the course of a mediation . . .” Section 44.403(1). The Committee believes that the written apology you reference clearly falls within the definition of a “mediation communication.” Therefore, it is confidential, since it is not included in the written agreement, has not been waived by the parties, and does not fall within any of the enumerated exceptions under section 44.405(4)(a).

Signed: Fran Tetunic, Chair
Dated: April 18, 2005

¹ While it is beyond the Committee’s jurisdiction to interpret specific statutory provisions unrelated to mediation, the Committee notes that section 69.081(8) contains the following language: “This subsection does not apply to trade secrets protected pursuant to chapter 688, proprietary confidential business information, or other information that is confidential under state or federal law.”

Question 2004-011

During a recent Mediation, opposing Legal Counsel, who is a Certified Mediator, presented a document and in an attempt to make my clients settle the matter being mediated indicated that in the document there was information that was damaging to my clients. He referenced the document to a litigation in which one of my clients was involved. We subsequently discovered that opposing Legal Counsel was the Mediator in the case to which he had referenced and that the case was settled through Mediation.

It is my understanding that any information that is obtained in Mediation is to be maintained by all parties, including the Mediator, in strictest confidence.

A. Did opposing Legal Counsel violate the Ethical Rules to which Certified Mediators are subject by referring to information in our Mediation that was obtained during another Mediation?

B. If there was a violation of the Ethical Rules, should opposing Legal Counsel withdraw as Legal Counsel in our case?

*Submitted by a Certified County and Circuit Civil Mediator
Central Division*

Authority Referenced

Rules 10.360, 10.520 and 10.620, Florida Rules for Certified and Court-Appointed Mediators
Sections 44.401-44.406, Florida Statutes
MQB 2003-002

Summary

A. Absent either waiver by the parties or a requirement to report imposed by law, a certified or court-appointed mediator shall not reveal information communicated during a mediation. Thus, the mediator in your question has violated at least Rule 10.360.

B. The Florida Bar would be the appropriate body to provide guidance in relation to attorney ethical questions. With regards to the mediator standards, Rule 10.620 states that a mediator "shall not ... perform any act that would compromise the mediator's integrity or impartiality," both of which appear to be brought into question in the scenario described.

Opinion

A. A mediator is ethically required to maintain confidentiality of "all information revealed during mediation except where disclosure is required by law." Rule 10.360(a). Confidentiality is one of the most fundamental precepts of mediator ethics. A mediator's obligation of confidentiality survives the completion of a mediation. Absent either waiver by the parties or a requirement to report by law, a certified or court-appointed mediator shall not reveal information communicated during a mediation. Thus, taking the assertions in

your question as true and complete (that is, that the document was not obtained independently through discovery in the current action), the Committee opines that the mediator in your question has violated at least Rule 10.360.

The Committee notes that in 2003, a grievance was filed against a mediator for reasons similar to those you describe. In that case, the mediator repeated information which he learned in one mediation in a second mediation in which he was acting in the role of attorney. After convening a meeting between the mediator and the complainant, the Mediator Qualifications Board found probable cause to believe that the mediator had violated the ethical standards, but decided not to pursue the case because “the violation, which was of an isolated nature, was recognized and understood by the mediator, and the mediator had already incorporated into his practice as a mediator a heightened concern for confidentiality for mediation proceedings.” MQB 2003-002. Similarly, in answer to your first question, the Committee is of the opinion that the mediator ethical standards may have been violated.

This conclusion is bolstered by the recently adopted Florida Mediation Confidentiality and Privilege Act, sections 44.401-406, Florida Statutes. As you are aware, a certified or court-appointed mediator must comply with all statutes relevant to the practice of mediation. Rule 10.520. Since, as you indicate, the mediator/opposing counsel is a certified mediator, the Act would attach to any mediation facilitated (on or after the effective date of the Act, July 1, 2004), regardless of whether it was conducted pursuant to court order.

The Act defines a “mediation communication” as an “oral or written statement ... by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of mediation...” Section 44.403(1). If the document in question was obtained during the course of the mediation, and was not otherwise excluded from confidentiality pursuant to section 44.405(4)(a), the reference to the information would violate not only Rule 10.360(a), but also Rule 10.520. If any of the enumerated exceptions applied, or if the document were otherwise discoverable and was, in fact, discovered independent of the mediation, it *might not* technically violate Rule 10.360(a), but would still likely be a violation of Rule 10.620, which specifically states that a mediator “shall not accept any engagement, provide any service, or perform any act that would compromise the mediator’s integrity or impartiality.”

B. Your second question raises issues of both attorney and mediator ethics. In relation to attorney ethical questions, the Committee refers you to The Florida Bar for guidance. With regards to the mediator standards, while there is no direct reference to withdrawal as an attorney in a future case, the Committee directs you to the discussion above, with specific reference to Rule 10.620.

Signed: Fran Tetunic, Chair
Dated: April 18, 2005

Question 2004-012

Once again I have received a conference announcement for a program offered by a single mediator to be held in a facility with subsidized or free space at a cost of \$250 (lunch on your own) for the day and 7.5 CEU's. I am asking what kind of contribution is it to the profession of Mediation to be profiteering on your profession at the expense of your colleagues? Yes, I understand caveat emptor and "whatever the market will bear." There are always those in such need of CEU's, obligation to the presenter or just so awash in wherewithal that convenience trumps cost. The rest of us need to make a living and still meet our CEU needs with quality programs. "Just go to the cheap events" is not an answer when accessibility to quality programs becomes economically discriminatory.

In my experience with multiple professions such profiteering is just not an acceptable practice. Contribution to the profession means reasonable fees. Most professional CEU programs come in at a cost of \$10 to \$20 per hour of credit. Preparation for my certification as a mediator came in at just over \$25 per hour, but that is a very rigorous and essential program with multiple speakers. Charging over \$33 per hour just seems to me to be ethically offensive practice.

Yes, there are some organizations offering programs in this cost range. But they do this as education marketing companies, not under the aegis of a certification, and they typically pay for speakers, high quality publications and high tech presentation in privately contracted facilities. Some even offer lunch. It just isn't the same. Do we have any standards of practice with regard to the offering of CEU programs, other than content?

*Submitted by a Certified County and Family Mediator
Southern Division*

Authority Referenced

Rules 10.600, 10.620, 10.690(c) and 10.900(a), Florida Rules for Certified and Court-Appointed Mediators
Florida Supreme Court Administrative Order AOSC00-8

Summary

Ethically, a certified mediator is required to preserve the quality of the profession, to maintain forthright business practices, Rule 10.600, not provide any service that would compromise the mediator's integrity or impartiality, Rule 10.620, and should support the advancement of mediation by participating in public education, Rule 10.690(c). Consistent with those provisions, it is permissive for the charges for CME to be set by competitive market forces.

Opinion

The Committee provides advisory opinions in response to "ethical questions arising from the Standards of Profession Conduct." Rule 10.900(a). While these standards apply to mediators in the practice of mediation, not to training program providers, the Committee acknowledges that there are some general ethical standards which would arguably apply to certified mediators who are also mediation training providers. Specifically, the Committee

notes that a mediator is required to “preserve the quality of the profession” and is responsible for “maintaining ... forthright business practices...” Rule 10.600. In addition, a mediator “should support the advancement of mediation by encouraging and participating in ... public education,” Rule 10.690(c), and “shall not ... provide any service ... that would compromise the mediator’s integrity or impartiality.” Rule 10.620.

Mediators have a variety of options to fulfill their continuing mediator education (CME) requirements, including some low or no cost options. These are codified in an administrative order of the Chief Justice, AOSC00-08. It provides that so long as the course or activity has “significant intellectual or practical content,” constitutes “an organized program of learning directly related to the practice of mediation,” and is conducted by an individual or group “qualified by practical or academic experience,” it can qualify for CME credit. The order also provides that individuals may complete their hours by listening to audio tapes, rather than attending live programs. Although 50 percent of all CME must be done in a “live” format, even this can be accomplished by listening to tapes, so long as it is done with another person and the individuals discuss the information presented on the tape. Mediators can (and do) create their own “low cost” CME activity.

Although the Chief Justice has set guidelines which cover the required hours and reporting procedures (among other matters) for CME, monetary limits for training have not been established. Therefore, implicitly, the charges for CME are set by the providers based on competitive market forces.

Signed: Fran Tetunic, Chair
Dated: March 18, 2005

Question 2005-001

I am certified by a Florida state agency as a private mediator of homeowners’ association disputes under its legislatively authorized Mandatory Mediation Program (HOA Program). A HOA Program case is initiated upon application of a Petitioner and payment of a filing fee of \$200.00.

The HOA Program states “private mediators shall bill the parties directly, who shall share the expenses and fees of the mediator equally, unless the parties agree to a different arrangement. In addition, the mediator will deduct \$100 from the Petitioner’s invoice and add \$100 to the Respondent’s invoice, in order for parties to equally share the initial cost of filing the Petition for Mediation, in accordance with Chapter 720, F.S.”

Under [Florida Supreme Court] Rules, is it appropriate for a certified mediator to adopt the HOA Program billing practice in order to insure compliance with the Florida Statutes?

*Certified County and Family Mediator
Central Division*

Authority Referenced

Rules 10.330, 10.380 and 10.520, Florida Rules for Certified and Court-Appointed Mediators
Section 720.311, Florida Statutes
61B-82.004, Florida Administrative Code

Summary

The HOA Program billing procedures do not present any *per se* ethical concerns related to fees, expenses, or impartiality for a Florida Supreme Court certified mediator who participates in this program so long as the fees and their allocation between the parties are disclosed in advance of the mediation to the parties or their counsel, and the parties are given the option of agreeing to that arrangement or negotiating a different one.

Opinion

A mediator is required to give parties or their counsel a written explanation of fees and costs prior to mediation. Rule 10.380(c). In setting those fees, a mediator shall be guided by the general principles enumerated in Rule 10.380, including subdivision (a), which states that “[f]ees charged for mediation services shall be reasonable and consistent with the nature of the case,” and subdivision (b)(3) which states that “all fees and costs shall be appropriately divided between the parties.”

Additionally, a mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation. Rule 10.520. In this particular situation, the mediator is working pursuant to a statutory framework. Section 720.311, Florida Statutes. In order to implement this statute, the Department of Business and Professional Regulation adopted Administrative Rules of Procedure which provide that “[i]f a private mediator is used, the mediator shall bill the parties directly who shall share the expenses and fees of the mediator equally, unless the parties agree to a different arrangement.” 61B-82.004, Florida Administrative Code. The Department requires participating mediators to collect the responding party’s half of the filing fee by adjustment of the mediator’s bills to the parties, absent contrary agreement of the parties, since the party requesting mediation is required to advance the entire filing fee.¹

The Committee opines that the procedures as outlined above do not present any *per se* ethical concerns related to fees, expenses, or impartiality for a Florida Supreme Court certified mediator who participates in this program so long as the fees and their allocation

¹ The letter of referral to mediation by the Homeowners’ Association Mediation and Arbitration Program contains the following language:

As the mediator, you are responsible for the direct billing to each of the parties. As section 720.3011(2), F.S., requires that both parties share the costs of mediation equally, this includes the initial \$200 filing fee. Therefore, in your final billing, you must subtract a total amount of \$100 from Petitioner invoice(s) and bill Respondent an additional \$100 for their half of the filing fee.

between the parties are disclosed in advance of the mediation to the parties or their counsel, and the parties are given the option of agreeing to that arrangement or negotiating a different one. Rules 10.330 and 10.380. However, as with any other ethical matter, a mediator should decline to mediate if the mediator believes the facts and circumstances might impair the mediator's ability to follow the Florida Rules for Certified and Court-Appointed Mediators.

Signed: Fran Tetunic, Chair
Dated: May 31, 2005

Question 2005-002

I am a judicial assistant in county court. I am also a certified mediator for County Court small claims. Although I never mediate any cases in my division, is it ethical for me to continue mediating county court small claim cases? I was in my current position when I applied to the Supreme Court for my certification.

*Submitted by a Certified County Mediator
Northern Division*

Authority Referenced

Rule 10.340 (a), Rules for Certified and Court-Appointed Mediators
Mediator Ethics Advisory Opinion 99-006

Summary

While your position as a judicial assistant does not automatically prohibit you from mediating, you are still obligated not to mediate a matter that "presents a clear or undisclosed conflict of interest," Rule 10.340(a). You are required to make this determination on a case by case basis.

Opinion

The Committee has previously responded that service as a Deputy Clerk for a County Clerk's Office would not "inherently cause a conflict of interest" as provided in Rule 10.340. MEAC 99-006. The Committee reaffirms that opinion in response to the current question. Thus, while your position as a judicial assistant does not automatically prohibit you from mediating, you still are obligated not to mediate a matter that "presents a clear or undisclosed conflict of interest," Rule 10.340(a). You are required to make this determination on a case by case basis.

Signed: Fran Tetunic, Committee Chair
Dated: November 10, 2005

Question 2005-003

As a certified circuit court mediator who mediates, among other things, disputes between public employers and collective bargaining agents where impasse has been declared regarding terms and conditions of employment to be incorporated in a collective bargaining agreement, I would like to elicit the opinion of the Mediator Ethics Advisory Committee concerning the following:

Question A: *Suppose a public employer and a bargaining agent secure the services of a mediator pursuant to the authority set forth in Florida Statute 447.403(1). During the mediation, the parties negotiate and reach a written tentative agreement on disputed terms and conditions that will be incorporated into a collective bargaining agreement.¹ Are the mediation participants, including the mediator, required to treat the mediation as a “negotiation” for purposes of Florida Statute 447.605(2) and Florida Statute 286.011(3) so that the press and general public may attend joint sessions and private caucuses?*

Question B: *If the answer to question 1 is yes, what should the mediator tell the mediation participants with respect to the confidentiality of mediation communications if the press and general public are permitted to attend both joint sessions and private caucuses?*

Florida Statute 447.403(1) provides that a public employer and a bargaining agent may appoint or secure the appointment of a mediator to assist in the resolution of an impasse concerning the terms and conditions of employment that are to be incorporated in a collective bargaining agreement.

Florida Statute 44.102(3) provides that “All written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119.”

Florida Statute 44.405(1) (2004) provides, in relevant part, as follows: “Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant’s counsel. A violation of this section may be remedied as provided by s. 44.406.” While section 44.405(4) authorizes disclosure of certain mediation communications under very limited circumstances, nothing in section 44.405 authorizes disclosure of mediation communications revealed during a mediation conducted pursuant to Florida Statute 447.403(1).

Florida Statute 44.403(1) defines a “mediation communication” as an oral or written statement, or nonverbal conduct intended to make an assertion, which is made by a mediation participant during the course of a mediation.

¹ The mediated resolution of terms and conditions that will be incorporated in the collective bargaining agreement are reduced to writing in a tentative agreement which is not binding on the public employer until it is ratified by the public employer and the public employees who are members of the bargaining unit. See Fla. Stat. 447.309(1).

Florida Statute 44.403(2) and (3) define “mediation participant” and “mediation party,” respectively. These definitions narrow the scope of participants to: (a) a named party; (b) a real party in interest; or (c) a person who would be a named party or real party in interest if an action relating to the subject matter of the mediation were brought in a court of law.

Florida Statute 447.605(2) provides that the collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of Florida Statute 286.011. Section 447.605 does not address whether mediations conducted pursuant to section 447.403(1) are considered “negotiations” for the purposes of complying with the provision of Florida Statute 286.011 and 447.605(2).

Florida Statute 286.011(1) provides in relevant part that all meetings at which official acts are to be taken are declared to be public meetings open to the public at all times. No resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

After reviewing the relevant statutory provisions, I am unclear about whether the press and general public must be permitted to appear at a mediation conducted pursuant to section 447.403(1). On the one hand, the mediation participants (including the mediator) are statutorily obligated to respect and preserve the confidentiality of mediation communications. This is particularly important since it is fairly well established that confidentiality during mediation promotes free flow of information and often leads to dispute resolution. On the other hand, the public employer and the bargaining agent may be compelled to comply with section 286.011 if the mediation conducted pursuant to section 447.403(1) is considered a “negotiation” for the purposes of section 447.605(2).

I am aware of a provision in an unrelated statute which expressly states that mediation attended by a quorum of the board of directors for a homeowner’s association is not a board meeting for purposes of notice and participation. *See Fla. Stat. 720.311(2)(a)*. However, the relevant statutes at issue with respect to collective bargaining negotiations and mediations are silent in this regard.

A search of Florida case law has not yielded any meaningful guidance. The first case, *Bassett v. Braddock*, 1971 WL 14847 (Fla. Cir. Ct. 1971), discusses whether Florida Statute 286.011 requires governmental employers, when engaged in collective bargaining, to do so in public rather than in private. Unfortunately, this case is merely a circuit court decision and it clearly predates the relevant statutory provisions, more specifically, section 447.403(1), 447.605(2), and the Mediation Confidentiality and Privilege Act of 2004. Although this case is factually and legally distinguishable, it does at least recognize “that meaningful collective bargaining will be destroyed if full publicity is accorded to each step [in the collective bargaining process].”

The second case, News-Press Publishing Company, Inc v. Lee County, 570 So.2d 1325 (Fla 2nd DCA 1990), involves the media's attempt to secure the right to attend a court ordered mediation, but it does not involve collective bargaining or an interpretation of the relevant statutes.

*Certified Circuit Mediator
Central Division*

Authority Referenced

Sections 44.401 – 44.406, Florida Statutes

Summary

The Committee lacks the jurisdiction to determine whether a mediation should be treated as a negotiation for purposes of sections 447.605(2) and 286.011(3), Florida Statutes. However, if a mediation falls within the scope of the Mediation and Confidentiality and Privilege Act, then all mediation participants are obligated to adhere to its provisions.

Opinion

A. The Committee declines to engage in statutory interpretation to answer your question because doing so would be beyond the Committee's jurisdiction. The Attorney General and the Public Employee Relations Commission [PERC] would be the appropriate offices from which to seek an advisory opinion on the issue of whether the mediation you describe should be treated as a negotiation for purposes of sections 447.605(2) and 286.011(3), Florida Statutes.

B. Regardless of the answer to the first question, the Committee notes that a mediator must answer the fundamental question of whether "mediation" is taking place within the scope of the Mediation Confidentiality and Privilege Act, sections 44.401 – 44.406, Florida Statutes. If it is, then all mediation participants are obligated to adhere to section 44.405, Florida Statutes. Breaches of confidentiality by any mediation participant are subject to civil remedies pursuant to section 44.406, Florida Statutes. In addition, a mediation party may prevent any other person present at the mediation from testifying in a subsequent proceeding regarding mediation communications, section 44.405(2), Florida Statutes.

Signed: Fran Tetunic, Committee Chair
Dated: November 10, 2005

Question 2005-004

Can a certified family mediator mediate a pre suit pro se mediation and have the consent (file final affidavits, petition, HCCJ affidavit, etc) final judgment entered by the court on behalf of one or both parties?

If the answer is no, does another mediator have an ethical obligation to report actions of the mediator doing so?

*Certified Family and Circuit Mediator
Northern Division*

Authority Referenced

Rule 10.340(d), Rules for Certified and Court-Appointed Mediators
Mediator Ethics Advisory Opinions 94-003 and 2004-004

Summary

It is inappropriate for a mediator to represent either one party or both parties in any dissolution proceeding or in any matter arising out of the subject mediation. There is no ethical obligation under the Florida Rules for Certified and Court-Appointed Mediators for a mediator to report allegations of ethical violations by another mediator.

Opinion

In MEAC 94-003 and again in MEAC 2004-004, the Committee stated..." it is inappropriate for a mediator to represent either party in any dissolution proceeding or in any matter arising out of the subject mediation." The Committee reaffirms the correctness of these opinions. Likewise, a mediator may not represent both parties in any matter arising from the subject mediation. See also Rule 10.340(d), which prohibits a mediator from creating a conflict of interest during the mediation or from providing any services that are not directly related to the mediation process.

Since the Florida Rules for Certified and Court-Appointed Mediators do not impose any duty to report on the mediator, a mediator has no obligation to report allegations of ethical violations by another mediator.

Signed: Fran Tetunic, Committee Chair
Dated: November 10, 2005

Year in Review continued from page 1

Procedure, the Florida Family Law Rules, the Florida Rules of Juvenile Procedure and the Code of Judicial Conduct take effect on January 1, 2006. The revisions to the Florida Rules of Judicial Administration will go into effect November 2007. To review a full copy of the Court's Opinion, please go to: www.floridasupremecourt.org/decisions/2005/sc04-2482.pdf.

In September, the Supreme Court heard Oral Arguments on case number SC05-146, In Re: Amendments to Florida Small Claims Rules. Judge Shawn Brieze, chair of the ADR Rules and Policy Committee attended Oral Argument on behalf of the Committee and in support of several amendments to the small claims rules relating to mediation of small claims cases. The Supreme Court issued its opinion on December 15, 2005, with an effective date of January 1, 2006. Subsequent to the release of the Opinion, Judge Brieze filed a Motion for Clarification. At the time we went to press, no further clarification had been published. Watch our website for updates.

In May, the ADR Rules and Policy Committee submitted its petition In Re: Petition of the ADR Rules and Policy Committee on Amendments to the Florida Rules for Certified and Court-Appointed Mediators, Case Number SC05-998. This petition contains proposed revisions to the qualifications for Florida Supreme Court certified mediators, in addition to revisions to the mediator grievance process and continuing mediator education requirements. Oral Argument has been set for February 8, 2006. We will publish the Court's Opinion and the rule revisions adopted by the Court in future issues and they will be available online as soon as we have them!

The ADR Rules and Policy Committee is continuing to work on Appellate Mediation Rules and possible revisions to Rule 10.610, Florida Rules for Certified and Court-Appointed Mediators, entitled Advertising. These will be published in draft form for comment prior to any filing with the Supreme Court for consideration, so you can expect to see drafts in 2006.

Other notable events of 2005 include:

- March: House Resolution 9021, recognizing the dedication of county volunteer mediators by Representative (and certified county, family and dependency mediator) John P. Quinones, IV.
- May: *The Resolution Report Online* debuts
- August: the 14th Annual DRC statewide conference for mediators & arbitrators
- October: the 9th annual celebration of mediation in Florida which coincided with the first national conflict resolution day. Mark your calendars now and plan your celebrations for October 19, 2006, when we hope to celebrate the second annual (inter)national conflict resolution day. Here in Florida, we hope to celebrate mediation all that week.
- October - December: Domestic Violence Screening Instrument Piloted. We are still tabulating the results from the pilot. Watch future newsletters for an update.

All in all, I would say it was a productive year... and 2006 promises to bring lots more! My best wishes for a happy, healthy and productive new year. Be sure to look for the next issue of *The Resolution Report Online* in April.

Mediator Qualifications Board Update

At the time of this printing, 87 cases have been filed with the Mediator Qualifications Board since the Board was created in 1992. Since the last update, one case reached closure and two new cases have been filed. The information from the case that was resolved is provided for educational purposes.

The resolved grievance was filed by an attorney in a circuit mediation (involving multiple plaintiffs in a land use case) against a certified circuit mediator. The complainant alleged that the mediator violated rules 10.310 (Self-Determination), by trying to coerce the plaintiffs into a decision; 10.330 (Impartiality), by inappropriately acting as a conduit for threats and coercion from the defendants; 10.360 (Confidentiality), by discussing “the mediation, the motions, and the events during caucus with opposing counsel” after the mediation was terminated; 10.370 (Professional Advice or Opinions), by “continuing the discussion on sanctions and giving advice to opposing counsel;” 10.410 (Balanced Process), by “encouraging coercive and adversarial conduct by passing along threats” from opposing counsel; 10.420 (Conduct of Mediation), by “not starting the mediation process as described” and for not adjourning or terminating the mediation “after [the mediator] feared for his physical safety;” 10.610 (Advertising), by “falsely claiming that litigators and trial attorneys have greater success and that an attorney who does not select the mediator’s association or another trial attorney or litigator does a disservice to his clients;” 10.640 (Skills and Experience), by making representations during the mediation even though “the facts and circumstances of the case were clearly beyond his experience and knowledge;” and 10.670 (Relationship with Other Professionals), by “failing to respect the complainant’s role as attorney for the plaintiffs.” The complainant also alleged violations of the following general rules based on the allegations described above: 10.210 (Mediation Defined); 10.230 (Mediation Concepts); and 10.300 (Mediator’s Responsibility to the Parties).

The complaint committee found the complaint to facially sufficient and requested a response from the mediator with regards to rules 10.310 (Self-Determination), 10.330 (Impartiality) and 10.370 (Professional Advice or Opinions). Based on the mediator’s response, the complaint committee hired an investigator to talk to the complainant, opposing counsel, the parties who attended mediation, and the mediator, and also to review the court file to determine who were the named parties, what happened to the case procedurally, and the outcome of the motion filed by opposing counsel for sanctions for failure to appear. The complaint committee also requested information related to allegations raised by the mediator that the complainant had been arrested for a “violent felony.” The investigator spoke to everyone as requested with the exception of the complainant and one of the complainant’s clients. The investigator attempted seven telephone calls and one personal visit to the complainant’s office, but never made contact. Based on the investigator’s report, the complaint committee dismissed the complaint finding there was no probable cause to believe that the mediator violated any of the standards of conduct.

In other MQB news, on August 1, 2005, Robert Wilhelm submitted a Petition for Reinstatement as a Mediator. A Hearing Panel was convened and, after reviewing the Petition and additional documentation, the Hearing Panel unanimously found that Mr. Wilhelm should be reinstated as a mediator effective December 30, 2005. Mr. Wilhelm had been decertified as a mediator on January 27, 2003, for failure to complete all of the sanctions imposed at a Hearing held November 28, 2001.

A Little About the Mediator Qualifications Board

by Sharon Press

The unsung heroes of the mediator grievance process are the 51 individuals who serve on the Mediator Qualifications Board (MQB). These individuals, who are appointed for four year terms, receive no compensation for the work they do, but amazingly, many of them have served for multiple terms. The MQB meets once each year as a committee of the whole. This meeting always takes place on the first Friday of December and enables the Board to review the prior year's activities, learn about any changes to the rules, statutes or procedures which will affect their deliberations, and to catch up with each other in person. This meeting in person is important because most of the work done by the MQB is completed through teleconferences and e-mail exchanges.

When a complaint is filed, the DRC will randomly select a three person complaint committee from the 17 member division in which the complaint arose (Northern, Central or Southern). The complaint committee will be made up of a judge or lawyer, a mediator from the type of complaint it is (county, family, circuit or dependency), and one additional mediator from the division members. The complaint committee will typically meet by conference call to review the complaint to determine facial sufficiency. If the complaint is not facially sufficient, the complaint will be dismissed with a letter to both the complaining party and the mediator who has been grieved against.

Since facial sufficiency is a very low standard (i.e., if everything in the complaint is true, would there be a violation of any of the standards of conduct for mediators), often the complaint committee will find facial sufficiency and identify rules which the committee is concerned may have been violated. The mediator is sent a copy of the complaint and the complaint committee's list of possible rule violations and has 20 days to file a response. The response goes back to the same complaint committee who now makes a preliminary review. At this stage the complaint committee can dismiss or find probable cause. If the committee finds probable cause, the committee may either forward the complaint to a formal hearing or "decide not to pursue the case." For example, the committee has used the latter option when the mediator has committed a technical violation, but has expressed remorse and already taken corrective action.



Back Row (left to right): Michael Kamen, Anthony Dieguez, Bruce Talcott, Judge Shawn Briesse, Marva Carter, Mark Palmquist, Stevie Buck, Judge Tom Bateman, Bill Moreno.
Middle Row: Jim Williams, Bob Cameron, Welborn Daniel, Risetete Posey, Carmen Stein, Janice Fleischer, June McKinney Bartelle, Sonia Caplan, Judge Theo Bronson.
Front Row: Heather Blanton, Kim Mann, Ana Tangel-Rodriguez.

Generally, a complaint committee will first attempt to do some additional investigation either themselves or through an investigator who is hired specifically for this purpose. The committee also has the option of meeting with the mediator and the complainant in an effort to resolve the complaint before or after a finding of probable cause. This option, while not a mediation, has many of the benefits we see at mediations – specifically, it provides an opportunity for the complainant to explain to the mediator why the complainant felt wronged and for the mediator to offer “recognition” and often an apology. Many grievances have successfully been resolved at this stage by the mediator agreeing to sanctions. The complaint committee cannot impose sanctions.

If the complaint committee has concerns that the standards have been violated and has been unable to resolve the complaint informally, the committee will draft formal charges and forward the complaint to a hearing panel. The five person hearing panel is chaired by a judge. The other four members include an attorney member plus three mediators, at least one of whom is from the type of the complaint filed. No MQB member who served on the complaint committee can serve on the hearing panel. Counsel will also be appointed to investigate and prosecute the complaint. The hearing is a more formal procedure and resembles a court proceeding. At the conclusion of the hearing, the panel will issue an order either dismissing the case if there is no “clear and convincing evidence” that a violation has taken place or impose sanctions on the mediator.

The MQB has traditionally taken the approach that its concern should be rehabilitation – not retribution or punishment, and therefore, many of the sanctions accepted or imposed, are intended to educate the mediator as to proper ethical procedure.

As you can see, each grievance takes a lot of time and effort by the members of the MQB. Join me in thanking these wonderful “unsung heroes” without whom the grievance system could not succeed.

Judges

Judge Tom Bateman (N)
 Judge Shawn Briesse (C)
 Judge Lauren Brodie (S)
 Judge Theotis Bronson (C)
 Judge Linda Dakis (S)
 Judge Pauline Drayton (N)
 Judge Dee Anna Farnell (C)
 Judge Jose Rodriguez (S)
 Judge Elijah Smiley (N)

Circuit Mediators

C. Welborn Daniel (C)
 Janice Fleischer (S)
 Julie Hilton (N)
 Ross McVoy (N)
 Larry Saichek (S)
 Bruce Talcott (N)
 James Williams (C)

County Mediators

June McKinney Bartelle (N)
 A. Heather Blanton (C)
 Robert Cameron (S)
 Sonia Caplan (S)
 Judy Carroll (C)
 Joe Fernandez (N)
 J. Dave Hunt (C)
 Valerie Kiffin-Lewis (S)
 Mark Palmquist (N)

Dependency Mediators

Paulette Armstead (S)
 Stevie Buck (C)
 Bill Ditto (C)
 Christopher Patterson (N)
 Carmela Porter (N)
 Robert Rushowy (S)

Family Mediators

Hewitt Bruce (S)
 Marva Carter (C)
 Kahlil Day (N)
 Paul McGuire (C)
 Bill Moreno (S)
 Chrystie Newell (N)
 Risetete Posey (N)
 Hannah Shear (S)
 Carmen Stein (C)

Attorneys

Allan Jay Atlas (S)
 Edward Birk (N)
 Carolyn Cummings (N)
 Anthony Dieguez (S)
 Eileen Griffin (C)
 Michael Kamen (S)
 Kimberly Mann (C)
 Jeffrey Savlov (N)
 Ana Tangel-Rodriguez (C)

N = Northern C = Central S = Southern

NEWS FROM THE FIELD

If you have mediation news to share, please forward it for possible inclusion in the newsletter.

Committee News

Hats Off To... Welcome to Ron Evans, of Pensacola, who has been appointed to the Mediator Ethics Advisory Committee.

Welcome to new Mediator Qualifications Board members William Gottfried and Hal Wotitzky. Bill, from Clearwater, has been appointed as a circuit mediator in the Central Division and Hal, from Punta Gorda, has been appointed as a circuit mediator in the southern division.

Court News

Fay Rice Retires. On November 30, 2005, Fay Rice retired from the 12th Judicial Circuit. Fay has been with court administration for 35 years. Beginning in 1970, Fay was a judicial assistant for several judges. She then became the administrative assistant to Trial Court Administrator, Jack Byers, before advancing to Senior Deputy Court Administrator. Fay created the circuit's Citizen Dispute Settlement Programs and Family Mediation Programs as well as being directly involved with the Guardian ad Litem Program, court reporters, interpreters, and acting as the Public Information Officer. She further was instrumental in offshoot programs like the Peer Mediation Program and the Community Mediation Project. We will surely miss her direction and leadership as well as the deep friendships she made with court staff all across the state. Thank you Fay and congratulations!

In Memoriam. Former Trial Court Administrator Jack Byers passed away October 13, 2005. He was the Twelfth Judicial Circuit's first court administrator and was instrumental in bringing the circuit to its service level of today. Jack was with the circuit for twenty years. He was a friend and colleague of many throughout the country and will be deeply missed.

Case and Comment

by Perry S. Itkin

“Mediation May Be Taxing!”

COMMENT: The Fifth District Court of Appeal in *Elder v. Islam*, 869 So. 2d 600 [Fla. 5th DCA 2004] noted that the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions did not address mediation costs in any way and the court encouraged the drafters of the Guidelines to address this issue to avoid disputes in the future. The encouragement was productive and now, well, take a look at what the Florida Supreme Court has decided.

In *In Re: Amendments To Uniform Guidelines For Taxation Of Costs*, 30 Fla. L. Weekly S 797 [Fla. 2005] the Court considered the report of the Civil Procedure Rules Committee recommending revisions to the Statewide Uniform Guidelines for Taxation of Costs in Civil Cases. The current Guidelines were adopted in 1981 [who remembers 1981?]. The Court’s overriding policy concern is to reduce the “impact of costs upon parties, with the ultimate aim of decreasing the overall costliness of litigation.”

The proposed guidelines set forth three categories of costs: (1) those that “shall be taxed;” (2) those that “may be taxed;” and (3) those that “should not be taxed.” [COMMENT: Pop Quiz – In which category are mediation costs?] The guidelines are not intended to be mandatory, and the appropriate assessment of costs in any particular proceeding remains within the discretion of the trial court. The Court cautions trial judges to exercise discretion in a manner that is consistent with the policy stated above.

The Court also established the burden of proof on the moving party in the taxation of costs “to show that all requested costs were reasonably necessary either to defend or prosecute the case at the time the action precipitating the cost was taken.”

Now, those who answered the Pop Quiz by selecting number 2, costs that “may be taxed,” chose correctly. Here’s the actual language:

II. Litigation Costs That May Be Taxed as Costs.

A. Mediation Fees and Expenses

1. Costs and fees of mediator.

“Let’s Do Lunch!”

Although this is not a Florida case, it does exemplify how mediation costs may be an issue in litigation and how one appellate court treated these costs. In *Morgan v. Steiner*, 619 S.E.2d 516 [2005], the North Carolina trial court ordered the plaintiff to pay mediation costs in the amount of \$634.30. The amount includes \$100.97 paid by defendants for lunch during the mediation conference [COMMENT: That must have been some lunch!]. Plaintiff conceded the fee of the mediator was an expense authorized under the North Carolina statute and disagreed with the assessment for the cost of the lunch defendants voluntarily provided during the conference.

Since the cost for the lunch defendants provided during the mediation conference was not authorized by statute and the defendant had not cited any case law authorizing the assessment of the expense for lunch, the appellate court held the trial court erred in taxing plaintiff with the costs of the lunch defendants provided at the mediation conference.

Florida Rules for Certified and Court-Appointed Mediators, Rule 10.330 Impartiality provides, in part:

Rule 10.330(c) Gifts and Solicitation. *A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.*

The Committee Notes provide “Subdivision (c) does not preclude a mediator from giving or accepting de minimus gifts or incidental items provided to facilitate the mediation.”

All to say, “Let’s do lunch” may become an issue. What, if anything, should the mediator have for lunch? Does it make a difference who is paying for the lunch and what the cost is?

“There’s No ‘Wiggle Room’ Here.”

In *Johnson v. Bezner*, 910 So. 2d 398 [Fla. 1st DCA 2005], Appellants appealed the trial judge’s “Order on Plaintiffs Motion to Compel Compliance with Mediation Settlement Agreement, For Sanctions, Contempt and Attorney’s Fees against Defendants.” They raised three issues on appeal [1] that the trial court erred in enforcing the settlement agreement against the defendants/appellants; [2] that the trial court erred in finding that the appellants had breached the agreement; and [3] that the court erred in fashioning a remedy for appellants’ alleged breach. The appellate court affirmed as to the first and second issues raised, but reversed as to the third issue.

The parties went to mediation in this real property dispute and reached a settlement, which was approved by the trial court. Thereafter, the appellee filed a motion against appellant to compel compliance with the agreement and for sanctions and attorney’s fees.

Following the hearing, the court entered an order finding that, although certain portions of the agreement were ambiguous, it was clear that appellants had a “legal duty to use good faith efforts to perform their obligations thereunder and they have failed to do so.” The court found that appellants’ attempt to re-argue the merits of their negotiated settlement was evidence of their bad faith.

As a result, the court ordered appellants to:

[A] within sixty days, provide evidence of taking some definitive action to seek approval from the county on a zoning issue;

[B] in the event they failed to do so, then appellee could do so herself and take appropriate steps to implement the terms of the settlement;

[C] “retain counsel for the express purpose of seeking such approval, and such counsel shall have the experience and knowledge in dealing with governmental agencies as shall be necessary to reasonably be expected to obtain the desired result.”

[D] pay appellee fees according to Rule 1.730, Florida Rules of Civil Procedure.

Appellants argued that the trial court exceeded its authority and the scope of the agreement by ordering them to take actions which were not required by the settlement agreement, e.g., that it was error to require them to hire counsel that is experienced in county zoning law and to award attorney’s fees as a sanction.

The appellate court held that an order enforcing a settlement agreement *must* [emphasis added] conform with the terms of the agreement and may not impose terms that were not included in the agreement and noted that “nothing in the agreement between the parties required appellants to hire an attorney, much less one experienced in zoning law.” Further, there was no provision that the appellee could hire an attorney and be reimbursed by appellants in the event of their breach. The appellate court directed that the trial court strike this language from the order.

As for attorney’s fees, the agreement provided that each party shall bear its own costs and fees “incurred in connection with this matter.” The trial court awarded fees pursuant to Rule 1.730(c), which states, “in the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorneys’ fees, or other appropriate remedies” Fla. R. Civ. P. 1.730(c) (2005). Appellants argued that an award of fees pursuant to Rule 1.730 is a sanction and in order to impose such a sanction, the trial court is required to make express findings of bad faith conduct on the part of appellants in breaching or failing to perform. Since the trial court did not make the appropriate findings, the appellate court held that the attorney’s fee award was error.

COMMENT: This case illustrates the importance of mediators being mindful of *Florida Rules for Certified and Court-Appointed Mediators*, Rule 10.420 Conduct of Mediation:

Rule 10.420(c) Closure. *The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.*

Do you think the scenario would have been different if the mediation agreement contained provisions addressing the consequences of a breach of the agreement and the procedures to be followed in that event?

Case and Comment

by Perry S. Itkin, Esquire
Dispute Resolution, Inc.

2200 NE 33rd Avenue, Suite 8G
Fort Lauderdale, FL 33305-1889
(954) 567-9746

E-mail: PerryItkin@MediationTrainingCenter.com

Admendments to Mediator Qualifications and Continuing Mediator Education - Oral Argument Scheduled

In May 2005, the ADR Rules and Policy Committee submitted to the Florida Supreme Court proposed amendments to the Rules for Certified and Court-Appointed Mediators and the Administrative Order Governing Certification.

The court announced that oral agrument has been scheduled for Wednesday, Feburary 8, 2006. Oral arguments are conducted in the morning starting at 9:00 a.m. and are streamed on the interent in real time at: <http://wfsu.org/gavel2gavel>.

To view documents filed in this case, go to www.floridasupremecourt.org. Click on Clerk, Rules Cases, and then Case Number SC-05-998.

The Resolution Report

N E W S L E T T E R

Dispute Resolution Center
Supreme Court Building
Tallahassee, Florida 32399
(850) 921-2910



Sharon Press
Director and Editor

Kimberly Ann Kosch
Senior Court Analyst II

Rosezetta Bobo
Senior Court Analyst II

Glenda S. Larry
Circulation Manager

Dawn M. Burlison
Production Editor

Pre-sort Standard
U.S. Postage Paid
Tallahassee FL 32301
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